



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Royal Gorge Field Office

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Canon City, Colorado 81212

http://www.blm.gov/co/st/en/fo/rgfo/oil_and_gas.html

In Reply Refer To:

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(COF0200) AR

March 2, 2015

Dear Operator:

This letter is to inform you that the BLM must ensure that the approval of an APD(s) does not violate Section 7 of the Endangered Species Act (ESA). There are federally listed species that occupy habitat downstream on the Platte River in Nebraska, that are likely to be adversely affected by water depletions resulting from oil and gas development in the South Platte Basin. In order to ensure that water depletions related to this action does not negatively impact these species in a way that violates the ESA, when applying for an APD in the South Platte Basin, one of the following three steps must be taken:

1. Join and maintain membership in the South Platte Water Related Activities Program (SPWRAP). Membership allows operators to take advantage of a streamlined process developed by the Bureau of Land Management (BLM) to provide Endangered Species Act (ESA) compliance for water depletions used to implement oil and gas activities in the South Platte Basin in Colorado. The BLM recently received a programmatic biological opinion (PBO) on water depletions related to oil and gas activities in the South Platte Basin in Colorado from the U.S. Fish and Wildlife Service (FWS). The PBO confirms ESA compliance for water-related activities of oil and gas producers that elect to rely on the Platte River Recovery Implementation Program (PRRIP) through maintaining membership in good standing in the South Platte Water Related Activities Program, Inc. (SPWRAP) organization.

With the PBO signed and in place, the BLM will review all Applications for Permit to Drill (APD) in the South Platte Basin for evidence of ESA compliance. Operators who utilize SPWRAP to ensure compliance with ESA must provide a copy of their current membership certificate in their APD package. If that step is taken, the operator may use any state approved water source for construction, drilling and completion operations.

The operator would be responsible for maintaining their SPWRAP membership in good standing for the duration of construction, drilling and completion activities approved under an APD.

Background information about ESA compliance and SPWRAP activities is provided in the enclosed briefing paper.

If your organization is interested in taking advantage of this streamlined approach to ESA compliance, please visit the SPWRAP website at <http://www.spwrap.org>. Information about the program and membership forms (Class I-2), which must be renewed annually, are available on the website. If you need additional information or have questions about SPWRAP, please contact SPWRAP Executive Director Kevin Urie at (303) 628-5987 or kevin.urie@denverwater.org

2. Certify that 100% of water that will be used in construction, drilling and completion activities is designated non-tributary to the South Platte River by the State of Colorado. In order to do so, operators must certify in the APD's Surface Use Plan of Operations (SUPO) that the source of the water has been designated non-tributary to the South Platte River by the State of Colorado, disclose the source of the water supply, and provide a copy of the well permit or water right that shows the water is designated non-tributary. The BLM may require the operator to submit a copy of the contract between the operator, any service companies providing water, and the entity that the well permit or water right lists as the owner of the well or water right.

If operators choose to use water from a source other than the source originally specified in the SUPO for construction, drilling and completion activities, they must request approval from BLM via sundry notice **PRIOR** to using water obtained from a different source than previously approved. Operators must again certify that the new/additional source is designated by the State of Colorado to be non-tributary to the South Platte River, disclose the source, provide a copy of the well permit or water right that shows non-tributary status, prior to the BLM approving this change in water source.

3. Allow time for the BLM to consult with the FWS prior to the approval of the APD. The operator likely would be required to prepare a biological assessment in house or hire an environmental consultant to prepare a biological assessment on the effect of water depletion resulting from the construction, drilling and completion activities in the South Platte Basin on federally listed species whose habitat is dependent on water in the South Platte in Nebraska. BLM would review the biological assessment, and once approved, BLM would submit it to the FWS. The FWS must then issue a biological opinion on the effects to the species. This option is a very lengthy and potentially expensive process and the operator may be required to commit to further mitigation measures (such as individual replacement plans) in order to be in compliance with ESA, which is required for BLM to approve the APD.

If you have any questions regarding the BLM's APD review process as it relates to compliance with the ESA, you may contact Aaron Richter at (719) 269-8512 or arichter@blm.gov

Sincerely,



Keith E. Berger
Field Manager
Royal Gorge Field Office

Enclosure: Briefing Paper

Endangered Species Act Section 7 Consultation on Water Depletions Caused By Oil and Gas Activity in Platte River Basin in Colorado

January 9, 2015

CURRENT STATUS

The Bureau of Land Management (BLM) requires an operator to replace any water used for oil and gas development that may affect federally threatened or endangered species. This requirement is based on policy created by Section 7 of the Endangered Species Act (ESA).

Recently, the number of applications for permits to drill (APDs) submitted to the BLM for federal lands in the Platte River watershed have increased sharply, highlighting the need to comply with Section 7 consultation requirements. The BLM is working with Colorado water users in the Platte River watershed to identify an approach that can be implemented in a simple, programmatic fashion to address the consultation requirement in Colorado.

To provide an alternative to individual water replacement plans in the consultation process, the Platte River Recovery Implementation Program (PRRIP) manages river flows and river-related habitat for the conservation and recovery of whooping crane, least tern, piping plover and pallid sturgeon located downstream in Nebraska. PRRIP is also designed to afford a streamlined means by which federal agencies can satisfy the requirements of the ESA in Colorado for those downstream federally-listed species.

BACKGROUND

APDs in the Royal Gorge Field Office have increased substantially. The field office recently completed an analysis of projected oil and gas development on federal mineral estate within the South Platte basin over the next 10 years. The analysis predicts 825 new wells, comprised of 37 vertical wells, 38 directional wells and 750 horizontal wells. Based on water use estimates provided by operators, the projected 825 wells will deplete approximately 8,550 acre feet of water from the Platte River basin over the next 10 years.

In the Colorado River basin, where water-dependent endangered species also exist, the BLM developed a programmatic Section 7 consultation process with the U.S. Fish and Wildlife Service (FWS). As a part of that process, the BLM estimated the projected level of water use for a set time period and consulted with the FWS on that volume. The “reasonable and prudent alternative” in the PBO consists of a one-time payment by operators to the National Fish and Wildlife Foundation, which is charged with funding habitat improvement projects on behalf of the Colorado River Recovery Program. The BLM references this approach in the NEPA documents for APDs, and reports oil and gas water usage annually to the FWS. When the volume is ultimately consumed, the BLM will re-initiate consultation. This approach has drastically reduced work required to comply with ESA requirements for operators and the BLM staff.

Participation in the PRRIP is structured differently than the Colorado River Recovery Program, with a focus on re-timing limited water supplies to provide the timing, flow rates and habitat functions needed



by the endangered species in Nebraska. Under the PRRIP, each state within the basin (Colorado, Wyoming and Nebraska) formally assumed responsibility for offsetting new depletions associated with water use within state boundaries.

PROGRAMMATIC CONSULTATION PROCESS

Colorado water users worked closely with the State of Colorado to form the South Platte Water Related Activities Program, Inc. (SPWRAP). This organization is formally charged with certifying to the FWS that water users in Colorado are meeting the requirements to support reliance on the PRRIP for ESA compliance purposes. Among other things, the organization assists the State of Colorado in complying with its financial and water requirements under the PRRIP. This includes implementation of groundwater recharge operations at times when South Platte River flows are in excess of the needs of endangered species and allowing the return of water to the river when flows are less than needed by endangered species.

Membership in the organization includes agricultural, municipal, industrial and other water users. Each member pays an annual fee. To streamline Section 7 consultation, water use accounting and approval of new water use projects, members pay annual fees based on all water consumed, not just water depletions associated with projects that require a federal permit. This approach eliminates the need for burdensome accounting procedures to identify which water uses do and do not have a federal nexus. It is more cost efficient for members in the South Platte basin to pay for a “group insurance policy” offered by membership than to self-mitigate through the acquisition of water to offset depletions.

The SPWRAP board discussed and voted to create a new membership category for oil and gas producers under the same commitments as current members. This would include paying fees for all water consumed by the industry (regardless of whether the water is used on federal mineral estate or private mineral estate), along with paying to proportionally offset start-up costs that the organization has incurred since its formation in 2007. SPWRAP estimates that the cost for oil and gas producers to join would be less than \$15 per well for 2014. In addition, the membership process would be streamlined, requiring only a two-page application to join, combined with annual reporting on the number of wells and volume of water used.